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ABSTRACT

This document outlines procedures for following the Chicago Board of Education procurement policy of providing fair and representative employment and business opportunities for minorities and women to remediate the adverse affects of historically discriminatory and exclusionary practices. These procedures are to be used in awarding contracts for goods and services, encouraging and providing for the greatest participation by business enterprises owned by minorities and women. This plan applies to all contracts funded in whole or in part with Board of Education funds. The document discusses the following: (1) policy; (2) application of the plan; (3) definitions; (4) certification; (5) participation goals; (6) set-asides; (7) credits; (8) demonstration of compliance in bid or proposal documents; (9) waiver and substitution; (10) monitoring of contracts; (11) noncompliance and sanctions; (12) Affirmative Action and technical assistance activities on the part of the Board of Education; (13) review of plan; (14) duration; and (15) severability. Included are the authorizations and wording for four amendments to be made to the policy: (1) Authorization to Amend Plan...to Provide for Expanded Temporary MBW/WBE Certification, November 19, 1986; (2) Motion to Amend Plan (Section 5.2), February 11, 1987; (3) Authorization to Amend Plan...to Provide That the Waiver Review Committee Include a Representative of the Chief Financial Officer, April 22, 1987; and (4) Authorization to Amend Sections 2.1, 2.1.3 and 2.3 of the Plan...to Extend Effective Dates of Certification and Bid Credits from April 30, 1987 to October 30, 1987, April 22, 1987. (KH)

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BOARD OF EDUCATION
CITY OF CHICAGO

Plan for Minority and Women Business Enterprise Contract Participation

October 22, 1986

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MINORITY AND WOMEN BUSINESS
ENTERPRISE CONTRACT PARTICIPATION PLAN

PREAMBLE

WHEREAS the Board of Education of the City of Chicago (the "Board") is committed to affording equal opportunities to all persons and firms to compete and to contract with the Board without regard to race, sex or ethnicity; and,

WHEREAS, there exists a dramatic disparity between the minority and female populations of the City of Chicago and the percentage of Board contracting expenditures placed with such minorities and females; and

WHEREAS, the Board has found that this disparity is the result of present effects of past discrimination and of Board purchasing procedures and policies that are ostensibly objective and neutral but that, in fact, deny equal contracting opportunities to women, blacks, Hispanics and other minorities; and

WHEREAS the Board through its contracting function has a significant impact on local economic activity and business development; and

WHEREAS, the lack of equal economic opportunities for women and minorities impedes the economic development of the City of Chicago and adversely impacts upon the tax base of the City from which the Board receives financial support; and

WHEREAS, most minority-owned businesses are located in centers of minority population, and the lack of equal economic opportunities for such businesses contributes to unemployment in such communities; and

WHEREAS, increased economic development and employment resulting from equal opportunities for minority-owned businesses is likely to contribute to increased educational achievement on the part of the Board's students; and

WHEREAS, the Board finds that businesses located within the City of Chicago are subject to significantly higher operating costs as compared to businesses located outside of the City of Chicago, and that such costs place businesses located in the City

of Chicago at a competitive disadvantage in bidding on Board contracts; and

WHEREAS, the Board has found that it is in its best interest and in the best interest of the economic development of the City of Chicago to attempt to ameliorate some of the effects of these higher costs through its purchasing function; and

WHEREAS, there exists a deplorably high unemployment rate among the Board's students and recent graduates; and

WHEREAS, it is the policy of the Board to ensure equal opportunities in employment regardless of race, ethnicity or sex and further to promote affirmative actions by employers to achieve equal employment opportunities; and

WHEREAS, the School Code of Illinois as amended requires the Board in most instances to award contracts to the "lowest responsible bidder," and the Illinois Supreme Court has interpreted said Code as allowing a bidder's responsibility to be measured in part by his commitment to equal opportunity and affirmative action; and,

WHEREAS, on November 10, 1971, the Board adopted a policy of attempting to give 25% of all its direct purchase business to minorities, but that policy, without the benefit of detailed implementation procedures, reporting, monitoring and enforcement mechanisms, failed to remove the historical barriers to minority and women participation in Board contracting;

NOW THEREFORE be it resolved that the Board of Education hereby adopts this Minority and Women Business Enterprise Contract Participation Plan as follows:

1. Policy Statement

The Board of Education of the City of Chicago is committed to a policy of providing fair and representative employment and business opportunities for Minorities and Women to remediate the adverse affects of historically discriminatory and exclusionary practices. Reflecting these findings of past discrimination against Minorities and Women, and in recognition of this policy, the Board of Education of the City of Chicago passed a Resolution, on October 22, 1986, adopting this Plan. This Plan sets forth procedures to be used in awarding contracts for goods and services, encouraging and

providing for the greatest practicable participation by business enterprises owned by Minorities and Women.

2. Application of the Plan

This Plan applies to all contracts funded in whole or in part with Board of Education funds. The Plan is effective as of November 1, 1986, except as specified in the transition schedule below. With respect to each effective date thus established for a particular aspect of the Plan, that aspect of the Plan does not apply to contracts for which the formal request for bids or proposals has been issued prior to the effective date.

2.1 With respect to the certification of MBEs and WBEs, every firm which is presently certified by the City of Chicago Purchasing Department as an MBE or WBE is hereby granted temporary certification which shall be effective until April 30, 1987, and shall then automatically expire. This temporary certification shall confer no rights to continued certification. During this period, the Board of Education will continue to conform its temporary certification list to the City of Chicago list, adding firms which are certified by the City of Chicago and deleting those which are decertified. Before April 30, 1987, the General Superintendent will develop and implement a certification system for the Board of Education, on a time line designed to produce the Board of Education's own list of certified MBEs and WBEs by April 30, 1987, including the de novo consideration for certification of firms granted temporary certification by this Section 2.1.

2.2 The effective date shall be December 1, 1986, for Parts 8 through 11 of the Plan, concerning demonstration of compliance, waivers, monitoring and sanctions for non-compliance.

2.3 The effective date shall be January 1, 1987, for Part 6 of the Plan concerning set-asides and Part 7 of the Plan concerning credits.

2.4 As rapidly as possible after adoption of the Plan, the Superintendent will transmit notice of the adoption of the Plan and a summary of its provisions to all persons on contractor and bidder lists, and include such information in all requests for bids or proposals. To the extent substantial or non-routine contracting activity is contemplated prior to January 1, 1987, the General Superintendent shall to the extent feasible defer

requesting bids or proposals to enable the provisions of this Plan to be applicable to such contracts.

3. Definitions

3.1 Appeals Committee - Consists of the General Superintendent, Chief Financial Officer and Attorney (or their designees).

3.2 Board of Education - The body politic and corporate (i.e., the institution).

3.3 Board of Education MBE/WBE Directory - A list of certified MBEs and WBEs maintained by the Board of Education.

3.4 Board of Trustees - The eleven-member governing board of the Board of Education.

3.5 Bureau - The Bureau of Equal Employment Opportunity and Affirmative Action.

3.6 Commercially Independent Function - The execution of a distinct element of work by actual performance, management and supervision.

3.7 Coordinator - A member of the Bureau staff who reviews certification status.

3.8 Decertification Committee - Consists of staff members of the Bureau and Law Department who review decertification complaints and reports.

3.9 Joint Venture - An association between two or more independent firms formed, consistent with Illinois laws, to perform a specific contract.

3.10 Minority - A member of a federally-identified racial/ethnic population group, specifically, black, Hispanic, Asian/Pacific Islander, or American Indian/ Alaskan native.

3.11 MBE - A business which is owned and controlled by a Minority person or persons under the criteria set forth in 4.1 hereof.

3.12 Prime Contractor - A firm which has entered into a contract with the Board of Education to provide goods or to perform services.

3.13 Subcontractor - A firm which has entered into a contract with a Prime Contractor to provide goods or services

pursuant to a contract between the Prime Contractor and the Board of Education.

3.14 WBE - A business which is owned and controlled by a Woman or Women under the criteria set forth in 4.1 hereof.

3.15 Waiver Review Committee - Consists of staff members of the Bureau and Law Department who review waiver requests.

4. Certification

4.1 Certification Criteria for MBEs and WBEs. To be eligible for certification by the Board of Education and entitled to the benefits of such certification, a business must meet the following criteria:

4.1.1 An eligible MBE or WBE must be owned as follows in the following contexts:

4.1.1.1 In a corporate form of organization, Minority and Women principal(s) must own at least fifty-one (51%) per cent of all voting stock of the corporation. Any voting agreements, voting trusts or shareholder agreements among the shareholders must not dilute the beneficial ownership, the rights or the influence of the Women or Minority owners of the stock or classes of stock of the corporation.

4.1.1.2 In a general partnership, the Minority and Women owners must own at least 51% of the partnership interests.

4.1.1.3 In a limited partnership, the Minority and Women owners must act as general partners, own at least 51% of the general partnership interest and exert at least 51% of the control among the general partners. In addition, the Minority and Women limited and general partners must receive at least 51% of the cash flows or other profits and benefits, including tax credits, deductions and postponements.

4.1.1.4 In a sole proprietorship, the Minority or Woman must own the company's assets.

4.1.2 An eligible MBE or WBE must be controlled and managed in the following respects:

4.1.2.1 The control by Minorities and Women shall be real, substantial and continuing and shall go beyond the pro forma ownership of the business as reflected in its ownership documents. The Minority and Women owners must enjoy the customary incidents of ownership and must share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of substance rather than form of arrangements. Newly formed businesses and businesses whose ownership and/or control has changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.

4.1.2.2 The Minority and Women owners must possess the power to direct or cause the direction of the management and policies of the business and to make the day-to-day as well as major decisions on matters of management, policy and operations. The business must not be subject to any formal or informal restrictions which limit the customary discretion of the Minority and Women owners. There must be no restrictions through, for example, bylaw provisions, partnership agreements, or charter requirements for cumulative voting rights or otherwise that prevent Minority or Women owners, without the cooperation or vote of any owner who is not a Minority or Woman, from making customary business decisions.

A previous and/or continuing employer-employee relationship between or among present owners is carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities.

If the owners of the business who are not Minorities or Women are disproportionately responsible for the operation of the business, then the firm is not controlled by Minorities or Women and shall not be considered an MBE or WBE within the

meaning of this Plan. Where the actual management of the business is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the managers can, for the purposes of this part, be considered as controlling the business.

4.1.2.3 The contributions of capital or expertise by the Minority and Women owners to acquire their interests in the firm shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the business or its owners who are not Minority or Women, or the mere participation as an employee, rather than as manager.

4.1.3 An eligible MBE or WBE must be an independent business serving a Commercially Independent Function.

4.1.3.1 In determining whether a potential MBE or WBE is independent and serving a Commercially Independent Function, all relevant factors shall be considered, including the date the business was established, the adequacy of its resources for the type of work that is sought, and the degree to which financial, equipment leasing and other relationships with non-minority businesses vary from industry practice.

4.1.3.2 In determining whether a potential MBE or WBE is independent and serving a Commercially Independent Function, information will be obtained and considered concerning the type and scope of work which a firm has performed in the past. This information will assist in determining whether the firm is qualified to serve a Commercially Independent Function with respect to a particular contract on which it is a bidder or proposed subcontractor. However, a potential MBE or WBE may be deemed independent and performing a Commercially Independent Function even if the contract it seeks involves services that it has not performed in the past, if an analysis of all relevant factors,

including the experience, training and education of its principals, supports its ability to successfully perform the contract.

4.2 Procedures for obtaining certification.

4.2.1 Initial Review of Applications. Upon receipt of a completed application form, a Coordinator shall review it, gather any necessary additional information from the applicant and process the completed application for further action.

4.2.2 Rejection Due to Incomplete Application.

4.2.2.1 Any partially completed application pending for at least forty (40) days because requested additional information has not been provided may be rejected. For purposes of this Section, the forty-day period begins on the day after the date the additional information was requested. The Bureau shall send notice to the applicant stating the reasons for rejection.

4.2.2.2 Any applicant whose application has been rejected due to applicant's failure to provide additional information shall not be entitled to file a new application until at least ninety (90) days following the date of the notice of rejection described in paragraph 4.2.2.1 hereof.

4.2.3 Investigation and Report. Following review of a completed application, the Coordinator shall:

4.2.3.1 Arrange for and conduct a site visit as he/she deems necessary;

4.2.3.2 Prepare a full report for the chief officer of the Bureau, including recommendations which shall be based on the criteria set forth in Section 4.1.

4.2.4 Determination of Certification Status.

4.2.4.1 The chief officer of the Bureau shall review the Coordinator's report and recommendations.

4.2.4.2 The chief officer of the Bureau shall render a prompt determination and shall cause written notice of his/her determination to be sent to the applicant. If certification has been denied, a statement of the reasons therefore and of the appeals procedure shall also be sent.

4.2.4.3 The chief officer of the Bureau may certify a business enterprise as an MBE or WBE (but not as both) where the percentage of Minority ownership and control and the percentage of Women ownership and control in the aggregate is at least 51% of the business enterprise (e.g., a partnership in which the ownership and control are divided equally between a Minority male and a white Woman).

4.2.4.4 The chief officer of the Bureau shall determine the percentages of black and Hispanic ownership of each certified MBE. These percentages shall be set forth in the Board of Education MBE/WBE Directory. They shall be used to determine compliance with participation goals as described in Section 5.1.4.

4.2.5 Appeals from Denial of Certification

4.2.5.1 Any applicant shall have the right to appeal a denial of certification by the chief officer of the Bureau.

4.2.5.2 A notice of intent to appeal and the grounds for any such appeal along with all relevant information and documentation must be received from the applicant by the Appeals Committee within ten (10) days of applicant's receipt of the chief officer of the Bureau's decision to deny certification. The notice of appeal shall be addressed to the Appeals Committee.

4.2.5.3 Upon receipt of the applicant's notice of appeal, the Appeals Committee shall review the complete file and record of the matter. In addition, at the Appeals Committee's discretion, a meeting may be held among the Appeals Committee, the applicant and the chief officer of the Bureau for the purpose of eliciting

information not available or sufficiently clear in the file and record of the matter. The Appeals Committee may also elicit such information through a telephone conversation with the applicant or through a written communication to the applicant.

4.2.5.4 The Appeals Committee shall issue a written decision within thirty (30) days of its receipt of the applicant's notice of appeal either affirming or reversing the chief officer of the Bureau's decision. There shall be no appeal from the decision of the Appeals Committee.

4.2.6 Board of Education MBE/WBE Directory. The Board of Education shall maintain a list of businesses that it has certified as MBE or WBE. When certification is granted, the certified MBE or WBE shall be added to the Board of Education MBE/WBE Directory and shall thereafter be considered certified for all purposes except as otherwise specifically stated in this Plan.

4.2.7 Length of Certification. Once certified, an applicant shall remain certified unless decertified as described in Sections 4.3 and 4.4 hereof.

4.2.8 Reapplication for Certification. Any applicant who has been denied certification, for any reason other than failure to provide additional information as set forth in paragraph 4.2.2, shall not be entitled to reapply for certification until at least six (6) months after the ultimate disposition of his/her earlier application, provided that reapplication is prohibited unless there has been some material change in the circumstances that were the basis for the original denial of certification.

4.3 Monitoring of Certification Status

4.3.1 Periodic Filing of Updated Information upon request. Each certified MBE and WBE shall file updated information as the Bureau may in its sole discretion determine is necessary and proper to monitor the certification status of the MBE or WBE.

4.3.2 Decertification for Failure to Provide Information. Any certified MBE or WBE failing to provide the information required by the Bureau within sixty (60) days from the date such information is requested shall be decertified, provided that an extension of time may be granted by the Bureau for good cause shown.

4.3.3 Notification of Changes in Original Information. An MBE or WBE must notify the Bureau of any substantial change in the information contained in its original or updated application with respect to ownership, control, independence, or certification status under any other MBE/WBE plan, within fifteen (15) days of any such change. The Bureau shall promptly notify the MBE or WBE if it determines that such change warrants a review by the chief officer of the Bureau of the status of the MBE or WBE. In the absence of such notification, the certification of the MBE or WBE continues.

4.4 False or Misleading Information. Provision of false or misleading information by a contractor in its application for certification, supporting materials or filings of updated information shall be grounds for the following:

4.4.1 Immediate rejection of certification application, if not previously certified;

4.4.2 Decertification, if previously certified;

4.4.3 Rejection of a bid or proposal;

4.4.4 Suspension or termination of the contract, a claim of damages by the Board of Education, and a declaration of ineligibility for future contracts, as described in 11.3, if a contract has been awarded.

4.5 Decertification For Failure to Meet MBE/WBE Criteria

4.5.1 Standards for Decertification. An MBE or WBE shall be subject to full decertification proceedings as set forth in this Section 4.5 if it fails to continue to meet criteria for MBE or WBE status.

4.5.2 Initiation of Decertification Process. Whenever the Board of Education receives a complaint or information which indicates that a business no

longer meets MBE or WBE criteria, it shall assign a Coordinator to conduct an investigation and to make a report to the Decertification Committee. Such complaint or information may be received from any source including staff members and other awarding agencies. The Coordinator shall not be the same Coordinator who made the original investigation and recommendation of the business.

4.5.3 Procedure for Investigation. A Coordinator who is assigned to investigate a complaint or information as set forth in 4.5.2 hereof shall:

4.5.3.1 Investigate the matter thoroughly by questioning parties who may have information bearing on the complaint or information, reviewing the pertinent provisions of laws, Plan provisions, rules and regulations, and reviewing such other documents and sources as will enable the Coordinator to render a fair and just report on the complaint or information.

4.5.3.2 Inform the business enterprise in writing of the substance of the complaint or information against it, and allow the business enterprise ten (10) days to respond in writing with clarifying or supplemental information.

4.5.3.3 Prepare a written report which shall include:

4.5.3.3.1 A statement of the complaint or information and other verified information leading to and resulting in the investigation;

4.5.3.3.2 A statement of steps taken to investigate the complaint or information, including a list of parties interviewed, the results thereof, and steps taken to verify any facts or allegations uncovered by the investigation, a summary of all oral statements and a copy of all written statements or other materials received from the business enterprise under investigation in response to the complaint or information;

4.5.3.3.3 A recitation of the pertinent provisions of the laws, Plan provisions, rules and regulations, and an explanation of the applicability of these laws, Plan provisions, rules and regulations to the complaint or information; and

4.5.3.3.4 A conclusion, which shall contain the Coordinator's recommendation for the disposition of the matter.

4.5.3.4 Submit the written report to the Decertification Committee.

4.5.4 Decertification Determination

4.5.4.1 The Decertification Committee shall review the report and recommendations of the Coordinator.

4.5.4.2 The Decertification Committee shall render its determination as expeditiously as possible, but in any event, shall render a determination within thirty (30) days from the date of its receipt of the Coordinator's written report.

4.5.4.3 Written notification of the Decertification Committee's determination shall be sent to the business, and if the business has been decertified, the notification shall include a statement of the reasons therefor and notification of appeals procedures available.

4.5.5 Appeals From Decertification

4.5.5.1 Any business which is decertified shall have the right to appeal.

4.5.5.2 A notice of intent to appeal and the grounds for any such appeal, along with all relevant information and documentation, must be received from the decertified business by the Appeals Committee within ten (10) days of the decertified business' receipt of the Decertification Committee's

decision. The notice of appeal shall be addressed to the Appeals Committee.

4.5.5.3 Upon receipt of the notice of appeal, the Appeals Committee shall review the complete file and record of the matter. In addition, at the Appeals Committee's discretion, a meeting may be held among the Appeals Committee, the decertified business and one or more members of the Decertification Committee for the purpose of eliciting information not available or sufficiently clear in the file and record of the matter. The Appeals Committee may also elicit such information through a telephone conversation with the decertified business or through a written communication to the decertified business.

4.5.5.4 The Appeals Committee shall issue a written decision within fifteen (15) days of its receipt of the notice of appeal either affirming or reversing the Decertification Committee's decision. There shall be no appeal from the decision of the Appeals Committee.

4.6 Prior Certification by Another Local, State or Federal Agency. Prior certification of a business by another federal, state or local agency shall be considered as evidence of an applicant's status by the Board of Education in its own certification determinations, to the extent such other certification is based upon comparable criteria. The mere fact that an applicant has been certified by another agency shall not be conclusive evidence that the applicant has satisfied the certification requirements of this Plan, provided, however, that any firm certified as an MBE or WBE by the City of Chicago Purchasing Department shall have temporary certification under the terms of this Plan. Such temporary certification shall be effective only until April 30, 1987, unless within that period the firm has applied and been certified by the Board of Education under this Plan.

4.7 Removal From Board of Education MBE/WBE Directory. Businesses which are decertified shall immediately be removed from the Board of Education MBE/WBE Directory.

5. MBE/WBE Participation Goals

5.1 Overall Goals. The following general goals will apply to the aggregate dollar value of all Board of Education contracts and will apply to any particular category of contracts unless the Board of Education sets a different goal for that category.

5.1.1 For each non-bid Board of Education contract, not less than 35% shall be expended with MBEs, including at least 22% expended with MBEs owned and controlled by Blacks and 10% expended with MBEs owned and controlled by Hispanics.

5.1.2 For each competitively bid Board of Education contract, not less than 25% shall be expended with MBEs, including at least 16% expended with MBEs owned and controlled by Blacks and 7.5% expended with MBEs owned and controlled by Hispanics.

5.1.3 For each Board of Education contract, not less than 5% shall be expended with WBEs.

5.1.4 For purposes of meeting these goals, businesses owned by minority women which have been certified by the Board of Education may be counted as MBEs or WBEs, but not as both. For purposes of meeting these goals, MBEs which have been certified by the Board of Education as being owned by Blacks and Hispanics may be counted as (a) Black MBEs and Hispanic MBEs in proportion to the percentages of Black and Hispanic ownership as determined pursuant to Section 4.2.4.4, or (b) either a Black MBE or an Hispanic MBE (but not as both), whichever has the higher percentage ownership.

5.2 Goals for Specific Categories. Separate goals for various categories of contracts may be set by the Board of Trustees when it determines that the number of responsible, qualified MBEs or WBEs in that category requires a lesser goal or justifies a greater goal.

5.3 Methods of Fulfillment. A contractor may fulfill the applicable goal in any, or a combination, of the following ways:

5.3.1 By being an MBE or WBE prime contractor.

5.3.1.1 The intention of the Board of Education under this Plan is to increase the amount of contract performance which is actually carried out by MBEs and WBEs.

Transactions in which MBEs or WBEs merely act as pass-throughs in circumstances which are not typical of industry practice are not encouraged. Accordingly, MBE and WBE compliance credit for construction, maintenance, repair or other type of service contracts shall not be given for any portion of the dollar value of contract performance which is passed through to non-MBE and non-WBE firms in the form of (a) sub-contracts or (b) equipment leasing or other acquisition of goods or services for performance of the contract in a manner which is not typical of industry practice with respect to such contracts.

For contracts to provide supplies or materials, MBE and WBE compliance credit shall not be given for any portion of the dollar value of contract performance which is passed through to non-MBE or non-WBE firms in the form of purchases of materials and supplies specifically for the contract in question.

5.3.2 For contractors that are not MBEs or WBEs, by subcontracting with or purchasing from MBEs or WBEs, the participation to be measured by the dollar value of the subcontract or purchase. Contractors will also receive credit for the use of MBEs and WBEs in services related to the contract (e.g., legal and accounting services, security and advertising).

5.3.3 By engaging in an eligible joint venture.

5.3.3.1 An MBE or WBE partner of a joint venture is eligible to be counted toward participation goals if the MBE or WBE partner is certified by the Board of Education and if that partner exercises control and performs a Commercially Independent Function, with respect to the contract to be awarded, determined in accordance with the criteria in 4.1.2 and 4.1.3.

5.3.3.2 Creditable participation by an MBE or WBE joint venture with a non-MBE or non-WBE does not require a minimum participation of 51% in venture ownership and control by the MBE or WBE. Credit will be given for

a portion of the total dollar amount of the contract equal to the percentage of the ownership and control of the MBE or WBE joint venturer.

5.3.3.3 As proof of MBE or WBE ownership of a joint venture, there must be submitted with the bid or proposal a written joint venture agreement between the parties which (a) evidences their respective ownership interests and financial involvement in the joint venture, and (b) delineates clearly defined managerial and other significant duties to be performed by the MBE or WBE joint venturer.

5.3.4 In professional service contracts, by the performance of the work by permanent minority or women employees of the contractor. Compliance shall be measured by the amount billed for such employees in relation to total billings.

5.4 Summary. The goal for a particular category shall apply to all contracts within that category. In order to be deemed responsible, a bidder or proposer must submit a compliance plan (Part 8) or obtain a waiver (Part 9), and once a contract is awarded, failure to make every good faith effort to fulfill the compliance plan shall be grounds for sanctions, including termination or liquidated damages (Part 11).

5.5 Exclusions. Contracts for unique goods and services, which are obtainable from only one source or a very limited number of sources, are subject to the Affirmative Action requirements of Section 5.5.2, but are not subject to the other provisions of Sections 5 through 11 unless otherwise specified by the Board of Education. The following contract categories are covered by this subsection, and other contract categories or particular contracts may be determined by the Board of Education to fall under this subsection. In addition, the Board of Trustees may determine with respect to any particular contract that the uniqueness of the goods or services makes it infeasible to subject the contract to Sections 5-11 of the Plan.

5.5.1 Utilities
Real estate purchases and leases
Postage

5.5.2 Affirmative Action Requirements. Prime

Contractors must provide the following with respect to Affirmative Action:

5.5.2.1 An agreement in the contract that the Prime Contractor will not discriminate against any person in performing work under the contract.

5.5.2.2 An agreement in the contract that the Affirmative Action obligations listed in this Section will be passed on by the contractor to all subcontractors, suppliers and unions.

5.5.2.3 An agreement in the contract to furnish to the Board of Education such related reports and information as may be required to insure compliance.

5.5.2.4 As a condition for acceptance by the Board of Education of any bid, the bidder must submit (or have on file) a written Affirmative Action Program demonstrating compliance with Board of Education policy and federal, state and local laws requiring Equal Employment Opportunity. To be acceptable, an Affirmative Action Program must include, at a minimum, an analysis of deficiencies in the use of Minorities and Women in the bidder's work force, and where deficiencies exist, must present goals and timetables to which the bidder's good faith efforts will be directed, to increase the use of Minorities and Women in all phases and all aspects of his work force. In addition, a submission of an Employment Practices Report and certification of non-discrimination, in the form prescribed by the Board of Education, will be required.

6. Set-Asides

6.1 Standards. Set-asides of a particular contract or set of contracts for MBEs and WBEs may be established under the following circumstances:

6.1.1 An evaluation of MBE and WBE participation in Board of Education contracts to the date of evaluation indicates that MBE or WBE goals are not being met and, under the Board of Education's

regular contracting procedures, are not likely to be met.

6.1.2 As a prerequisite, there shall exist at least three available MBEs or WBEs with the capabilities to perform the contracts to be set aside.

6.2 Procedures for Establishment of a Set-Aside.

6.2.1 Initial Recommendation of Set-Aside.

6.2.1.1 The Bureau shall periodically evaluate the status of MBE and WBE participation in Board of Education contracts.

6.2.1.2 In the event that the Bureau determines the conditions described in 6.1.1 and 6.1.2 to exist, the Bureau may recommend the establishment of a set-aside. The Bureau shall prepare a report summarizing the results of its evaluation and including its recommendations.

6.2.2 Appeals Committee Review of Recommendations.

6.2.2.1 The Appeals Committee shall review the recommendations of the Bureau.

6.2.2.2 The Appeals Committee shall render a prompt determination as to the advisability of the Bureau's recommendations and shall submit its recommendation to the Board of Trustees for final action.

6.2.3 Determination of Set-Aside.

6.2.3.1 The full Board of Trustees shall review the recommendations of the Appeals Committee.

6.2.3.2 If the full Board of Trustees determines that the set-aside is in the best interests of the Board of Education, the set-aside shall be approved.

6.2.3.3 Approval of set-asides requires a waiver of formal competitive bid procedures by the Board of Trustees.

7. Credits

7.1 Application of Credits. Nominal credits will be given on all contracts under the circumstances described in 7.2-7.4. Firms may accumulate credits of more than one type, but the aggregate credit may not exceed 5%. The credit will be applied as follows:

7.1.1 For purposes of awarding the contract, the appropriate percentage, as calculated pursuant to 7.2-7.4, will be subtracted from the base bid or proposal. The adjusted amount will be considered instead of the base bid or proposal in determining the lowest responsible bidder or proposer.

7.1.2 For purposes of determining the amount actually to be paid for the work performed under the contract, the base bid or proposal will be used.

7.2 Local Firms. A credit of up to 2% will be given to firms who will perform substantially all of the contract work within the City of Chicago.

7.2.1 A credit of up to 2% to such firms who have their permanent principal place of business in the City of Chicago.

7.2.2 A credit of up to .5% to such firms who have an office, division or branch within the City of Chicago.

7.3 Employment. A credit of up to 3% will be given for the percentage of Minorities and Women among the permanent employees of the firm. The effect of the formula will be that the maximum credits available will be:

Managerial Employees	1.0%
Technical & Professional Employees	1.0%
Other Employees	1.0%

7.4 Programs for Public School Students. A credit of up to 2% will be given to firms who are conducting certified programs for the training, employment or continuing education of present or former Chicago Public School students.

7.4.1 The Board of Education will establish a process to consider and to certify private-sector programs designed to train, employ or assist the continuing education of CPS students and former CPS students up to age 20. Certification shall be based on the

determination that the program is substantial in terms of the number of students served and the resources devoted by the private firm; that the program is significant in terms of its training, employment or continuing education objectives; and that the program is feasible and effective.

7.4.2 In certifying a program based on the foregoing criteria, the Board of Education will determine the amount of the bid credit, up to a maximum of 2%, to which the firm shall be entitled in bidding on Board of Education contracts.

8. Demonstration of MBE and WBE Compliance in Bid or Proposal Documents.

8.1 Specification of MBE and WBE Requirements. MBE and WBE requirements will be specified as special conditions in invitations for bids and bid documents and requests for proposals. This specification will include a listing of all documentation which must be submitted with the bid or proposal and will describe the reporting requirements applicable during the contract period.

8.2 Demonstration of MBE and WBE Requirements. The bid or proposal must demonstrate in detail the manner in which the contractor will comply with MBE and WBE requirements.

8.2.1 Proposed MBEs and WBEs must be identified. Full compliance with goals is required, unless a waiver is obtained.

8.2.2 MBEs and WBEs proposed by the contractor for participation in the contract shall, as of the date the contractor's bid or proposal is submitted to the Purchasing Department, possess a current MBE or WBE certification from the Board of Education. In the alternative, the contractor shall submit an affidavit or acceptable equivalent that the proposed MBE or WBE participant has, as of the first date of advertisement for bids or as of the proposal request date, whichever is applicable, an application for certification by the Board of Education awaiting review for a determination of MBE or WBE certification eligibility. Unless a waiver is obtained, contractors failing to adhere to this requirement shall be considered non-responsive.

8.2.3 The bid or proposal submission, in conjunction with any certification material on file, must demonstrate that the MBEs or WBEs will perform a

Commercially Independent Function with respect to the contract being awarded.

8.2.4 An MBE/WBE which has been certified more than six months prior to submission of the compliance proposal must submit an affidavit which either details any change in its circumstances relevant to its certification status or states that there has been no such change.

8.3 Contract Provisions. Material submitted by the contractor as described in 8.2 will constitute the contractor's compliance plan and will be incorporated as part of the contract.

8.3.1 All Board of Education contracts will include an obligation on the part of the contractor to pay any attorneys' fees and costs incurred by the Board of Education if the Board is the prevailing party in litigation by or against it arising from the application of the Plan to the contract. The contract shall also provide for the sanctions provided in 11.2 through 11.4.

8.4 Determination of Responsibility. Compliance with MBE or WBE requirements will be considered in determining whether the bidder or proposer is responsible. When other aspects of bids are not decisive, the contract shall be awarded to the bidder having the higher level of MBE/WBE participation. Similarly, when comparing proposals for a contract, the proposed level of MBE/WBE compliance shall be one of the decisional criteria. A bid or proposal may be rejected in the following circumstances:

8.4.1 After the contractor has been given the opportunity to cure deficiencies, as detailed in 8.5.2, no waiver has been obtained, and the bid or proposal contains an insufficient level of MBE or WBE participation.

8.4.2 The contractor is uncooperative in providing information regarding its MBE or WBE participation efforts.

8.4.3 The contractor provides false or misleading information in its bid or proposal, or in supplements to its bid or proposal.

8.5 Validation of MBE and WBE Submission Prior to Award of Contract.

8.5.1 Initial Review of Submissions. Upon receipt of a bid or proposal, a staff member of the Bureau shall review it, gather any necessary additional information from the contractor, and make a preliminary determination of whether MBE and WBE requirements are met. If the requirements have been met, the reviewing staff member shall give final approval to the MBE and WBE submissions.

8.5.2 Opportunity to Cure Deficiencies. If the reviewing staff member of the Bureau makes a preliminary determination that MBE and WBE requirements have not been met, the contractor must be notified in writing of the deficiencies in the bid or proposal. The contractor shall be entitled to a period of 10 days from receipt of notification to cure the stated deficiencies.

8.5.3 Final Determination. At the end of the cure period described in 8.4.1, the reviewing staff member of the Bureau shall review the additional information submitted by the contractor, if any, and render a final determination.

8.5.3.1 In evaluating whether an MBE/WBE submission is adequate, the Bureau may take into consideration the additional cost that would be incurred by declaring the bidder not responsible. Where the Bureau has determined that the lowest bid is not responsible because of its failure to comply with this Plan, the Bureau may negotiate with the lowest responsible bidder to obtain a lower price.

8.5.3.2 In evaluating whether an MBE/WBE submission is valid and viable, the Bureau may take into consideration the fact that the firm has a certified training, employment or educational program under section 7.4.

8.5.4 Decisions of Appeals Committee.

8.5.4.1 If at any time during the review of MBE and WBE submissions the reviewing staff member of the Bureau encounters a difficult question which impedes the staff member's ability to reach a decision, the staff member shall seek approval from the

chief of the Bureau to present the question to the Appeals Committee. If the chief of the Bureau approves, the question will be presented to the Appeals Committee in writing for decision.

8.5.4.2 The Appeals Committee shall review all questions presented to it pursuant to 8.5.4.1 and shall render a prompt resolution of the question to the Bureau.

8.6 Statements of Compliance. All submissions of proposed contracts to Board of Trustees committees or to the full Board of Trustees for approval shall include a statement of the status of compliance of the contract with this Plan.

9. Waiver and Substitution

9.1 Advance waiver by request of contractor.

9.1.1 A request for total or partial waiver may be submitted by a contractor with its bid or proposal if, despite good faith efforts, it is impossible to meet the MBE or WBE goal.

9.1.2 Requests for waivers shall be under oath, shall be accompanied by supporting documentation, and directed in writing to the Bureau.

9.1.3 A Waiver Review Committee shall review all waiver requests to determine whether there is sufficient evidence that despite good faith efforts by the contractor, it is not possible to meet the MBE or WBE goal. Waivers shall be sparingly granted.

9.1.3.1 The waiver request must establish by clear and convincing evidence that full compliance with MBE or WBE requirements is impossible or economically unreasonable under the circumstances. Evidence should generally include, but not be limited to, the contractor's general affirmative action policies; advertisement in minority oriented and general circulation media no less than 10 (ten) days before bids or proposals were due; notification of minority and women contract assistance agencies of a solicitation for sub-bids; and a detailed statement of direct

negotiations with MBEs or WBEs for specific sub-bids.

9.1.3.2 Credible evidence of agreement by, or intentions of other potential contractors to perform on the contract, if awarded, without the necessity of a waiver from MBE or WBE requirements shall constitute presumptive evidence that MBE or WBE compliance is possible.

9.1.3.3 Evidence that price alone influenced a contractor's decision not to utilize MBEs or WBEs shall constitute presumptive evidence that MBE or WBE participation in the contract is not economically unreasonable, unless the contractor can establish to the satisfaction of the Waiver Review Committee that no reasonable price can be obtained from any MBE or WBE. A price quoted by an MBE or WBE for a subcontract or agreement will, however, be presumed unreasonable if it exceeds by more than fifteen percent that determined by the Bureau to represent the average price for the goods or services to be provided.

9.1.3.4 The Waiver Review Committee may request from the contractor any information relevant to the waiver request. Failure of the contractor to cooperate in providing requested information is grounds for rejection of the waiver request.

9.1.3.5 The Waiver Committee shall render a prompt written decision stating its reasons for granting or denying a waiver request.

9.1.4 Appeals from Denial of Waiver Request.

9.1.4.1 Any contractor shall have the right to appeal a denial of waiver request by the Waiver Request Committee.

9.1.4.2 A notice of intent to appeal and the grounds for any such appeal along with all relevant information and documentation must be received by the Appeals Committee within five (5) days of applicant's receipt of the Waiver Review Committee's decision to deny waiver. The notice of

appeal shall be addressed to the Appeals Committee.

9.1.4.3 Upon receipt of the contractor's notice of appeal, the Appeals Committee shall review the complete file on the matter. Additional information may be requested from the contractor. The Appeals Committee shall issue a written decision, within 10 days of its receipt of the contractor's notice of appeal, either affirming or reversing the Waiver Review Committee's decision.

9.1.5 If a waiver is granted establishing an MBE or WBE goal for the contract significantly different than originally applied, the Appeals Committee may determine that it is necessary to re-bid the contract.

9.2 Subsequent waiver by request of contractor.

9.2.1 During the performance of a contract, a contractor may request a partial waiver from compliance with its MBE or WBE proposal for the following reasons:

9.2.1.1 Due to substantially changed circumstance it is impossible to meet the MBE or WBE goal.

9.2.1.2 Despite every good faith effort on the part of the contractor, it is impossible to meet the MBE or WBE goal.

9.2.2 Requests for waiver and review of requests for waiver subsequent to contract award shall be made in accordance with 9.1.2- 9.1.4, excluding 9.1.3.2.

9.3 Substitution.

9.3.1 Substitutions with respect to MBE or WBE participants shall not be made without the prior written approval of the chief of the Bureau.

9.3.2 Requests for substitution shall be directed in writing to the chief of the Bureau, along with reasons justifying such substitution. Stated reasons which would be acceptable include any of the following examples: a previously committed MBE or WBE has rescinded that commitment; a committed MBE or WBE was found not to be able to

perform or not to be able to perform on time; a committed MBE or WBE was found not to be able to produce acceptable work; a committed MBE or WBE was discovered later to be not bona fide; an MBE or WBE previously committed at a given price later demands an unreasonable escalation of price.

Stated reasons which will not be acceptable include: a replacement firm has been recruited to perform the same work under terms more advantageous to the prime contractor; issues about performance by the committed MBE or WBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated satisfactorily); an MBE or WBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

9.3.3 Requests for substitution shall include the name, address, and principal official of any proposed substitute MBE or WBE and the dollar value and scope of work of the proposed subcontract. Attached should be all the same documentation required of bidders as described in 8.2.

9.3.4 The chief of the Bureau will evaluate the submitted documentation, and respond within 15 working days to the request for approval of a substitution. The response may be in the form of requesting more information, or requesting an interview to clarify or mediate the problem. The chief of the Bureau may approve or reject any request in its entirety, or impose conditions upon any approval. If such substitution would result in failure by the Prime Contractor to fulfill its compliance plan, a request for waiver must be submitted to the Waiver Review Committee.

9.4 Waiver initiated by the Board of Education.

9.4.1 The Appeals Committee, on its own initiative or at the request of the Bureau, may grant a waiver from MBE or WBE requirements to an individual contract upon a determination by the Appeals Committee that there are insufficient qualified MBEs or WBEs available to fulfill such requirements for that particular contract.

9.4.2 A determination by the Appeals Committee to waive MBE or WBE requirements for an individual contract must be stated in writing.

9.4.3 Waivers may be partial or total.

9.5 Prior Board Approval. A waiver must be approved by the Board of Trustees before the contract is awarded if (a) the contract amount exceeds $100,000, or (b) the proposed waiver alters the applicable goal by more than five percent.

9.6 Additional Criteria. In determining whether to grant a waiver, the decisionmaker may take into consideration the additional cost which would be incurred by denying the waiver and awarding the contract to the next lowest bidder who has not requested a waiver. Where the Bureau has determined that the lowest bid is not responsible because a waiver request contained in the bid has been denied, the Bureau may negotiate with the lowest responsible bidder to obtain a lower price.

10. Monitoring of Contracts

10.1 Records. Contractors shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, including, without limitation, payroll records, tax returns and records, and books of account. These records shall be retained by contractors for a period of at least three years after the Board of Education's final acceptance of the work. Full access to these records shall be granted, upon 48 hours notice, to the Board of Education or any duly authorized representative thereof.

10.2 Progress Reports. Contractors shall submit progress reports to the Bureau on a monthly basis throughout the term of the contract.

10.2.1 Subcontracting reports shall be submitted on all expenditures made within the period reported on. Such reports shall include, for the reporting period, the name and business address of each MBE and WBE involved in the contract; a description of the work performed and/or product or service supplied by each such MBE and WBE; the total amount subcontracted to MBEs and WBEs; the dollar amount expended with each MBE and WBE and the date expended; and such other information as may assist the Bureau in determining the contractor's compliance with MBE and WBE requirements.

10.2.2 Employment activity reports shall be submitted.

10.2.3 Progress reports shall be subject to review and/or detailed audit by the Board of Education within thirty days of their receipt by the Bureau and shall be used by the Bureau for measuring the contractor's bad faith for failure to utilize certified MBEs and WBEs. The Bureau shall have the right to request and obtain from the contractor, within ten days of said request, any and all additional data as the Bureau may determine to be reasonably related or necessary to verify the representations made in the progress reports.

10.3 Inspections. The Bureau may periodically conduct on-site inspections of each contract site.

10.4 Additional Criteria. In evaluating whether a contractor is acting in good faith to fulfill its MBE/WBE obligations, the Bureau may take into consideration the fact that the firm has a certified training, employment or educational program under Section 7.4.

11. Noncompliance and Sanctions

11.1 Notification. Upon indications of inadequate compliance or noncompliance, the Bureau will notify and negotiate with the contractor to correct deficiencies.

11.2 Criteria. If, after notification of deficiencies, the Bureau determines that a contractor is not meeting or has not met applicable MBE or WBE goals and is not demonstrating or has not demonstrated every good faith effort to meet the goals, the contractor shall be subject to suitable sanctions as set forth in 11.3.

11.3 Sanctions. The following sanctions may be applied in the following circumstances:

11.3.1 Where the Bureau determines the conditions set forth in 11.2 to exist during the term of the contract, the Bureau may recommend that the Board of Trustees suspend or terminate the contract, in whole or in part. The contractor shall be liable to the Board of Education for any consequential damages incurred as a result of suspension or termination of the contract, including damages arising either from delay or increased price in securing performance of the work by other contractors.

11.3.2 Where the Bureau determines the conditions set forth in 11.2 to exist at the conclusion of a

contract, the Board of Trustees may retain as liquidated damages 5% of the contract price.

11.3.3 If at any time the Bureau determines the conditions set forth in 11.2 to exist, the Bureau may declare the contractor ineligible for future Board of Education contracts for a period of 2 years. A contractor shall have the right to appeal a Bureau decision that it is ineligible for future Board of Education contracts. Such appeal shall be made to the Appeals Committee in accordance with the procedures for appealing a denial of a waiver request as detailed in Sections 9.1.4.2 and 9.1.4.3.

11.3.4 If a contractor has provided false or misleading information in connection with certification, bid or proposal, bid or proposal documents, compliance progress reports, or any other aspect of this Plan, the Bureau may impose any of the sanctions described in 11.3.

12. Affirmative Action & Technical Assistance Activities On The Part Of The Board of Education

12.1 Affirmative Actions. The Board of Education will take the following affirmative actions to increase MBE and WBE contract participation:

12.1.1 Encouraging joint ventures between non-minority firms and MBE and WBE contractors on large contracts.

12.1.2 Breaking out contracts into smaller packages to allow for bidding by smaller MBEs and WBEs.

12.1.3 Maintaining the Board of Education MBE/WBE Directory and making it available to any interested person during normal business hours.

12.1.4 Advertising invitations to bid, particularly in minority media, including statements indicating the intent of the Board of Education to encourage MBE and WBE participation.

12.1.5 Advertising generally in minority media and minority communities regarding the existence and purposes of this Plan.

12.1.6 Requesting the assistance of other public agencies in referring MBEs and WBEs.

12.1.7 Contacting private sector organizations, including non-profit groups engaged in economic development activities and MBE and WBE trade and commercial associations, and soliciting assistance in obtaining MBE and WBE participation.

12.2 Technical Assistance. The Bureau will endeavor, within available resources, to provide technical assistance to MBEs and WBEs to facilitate participation in Board of Education contracts. To avoid selective assistance or collusion or the appearance thereof, all bidders will be notified of the availability of such technical assistance, and information concerning a particular contract which is provided to one bidder will be provided to all bidders. Technical assistance includes the following:

12.2.1 Assisting MBEs and WBEs in obtaining certification.

12.2.2 Assisting MBEs and WBEs in obtaining bonding and insurance.

12.2.3 Assisting MBEs and WBEs in submitting bids by offering seminars and training on such topics as bid preparation, Board of Education procedures, finance and project management.

12.2.4 Providing review and critique of unsuccessful bids submitted by MBEs/WBEs to identify shortcomings and facilitate submission of successful future bids.

12.2.5 Assisting successful bidders in fulfilling their contract, through guidance on meeting administrative requirements.

13. Review of Plan

13.1 Staff Reports. The General Superintendent will submit monthly reports and an annual report to the Board of Trustees as to the administration and results of the Plan. The results will include a cumulative tabulation showing the number and aggregate amount of non-bid contracts received by individual contractors.

13.2 Committee Review. The operation and effect of the Plan shall be reviewed by the Management Committee of the Board of Trustees on a monthly basis. Policy issues concerning implementation and recommendations for

modification of the Plan will be submitted to and considered by this Committee. The Management Committee shall present issues or recommendations for further action to the full Board of Trustees as appropriate.

13.3 Corrective Action. If the reporting and review process indicates at any time that the goals applicable to any category of contracts are not being met, the General Superintendent (or the Chief Financial Officer or Board Attorney if the matter is within their responsibility) will advise the Management Committee and recommend to the Board of Trustees additional measures designed to achieve the goals. Such measures may include, but not be limited to, contract set-asides, increased goals for other contract categories, and increased monitoring of MBE and WBE compliance by contractors.

14. Duration

14.1 The Plan will be reviewed by the Board of Trustees annually in light of the Superintendent's report to determine whether its goals should be adjusted up or down or whether the Plan continues to be necessary and appropriate in terms of its remedial objectives and its methodology.

15. Severability

15.1 If any of the provisions set forth herein or any section, subsection, word, phrase, clause or sentence thereof shall be found to be invalid, illegal or unenforceable for any reason, the remainder of this Plan shall not be affected by such invalidity.

7-2-87

86-1119-MS3

November 19, 1986

AUTHORIZATION TO AMEND PLAN FOR MINORITY AND WOMEN BUSINESS ENTERPRISE CONTRACT PARTICIPATION ADOPTED OCTOBER 22, 1986 TO PROVIDE FOR EXPANDED TEMPORARY MBE/WBE CERTIFICATION

RECOMMENDATION: Authorization to amend Section 2.1 of the Plan for Minority and Women Business Enterprise Contract Participation to provide for expanded temporary MBE/WBE certification as follows:

2.1.1 Temporary certification shall also be given to firms which have an application pending with the City of Chicago for MBE or WBE certification. Such certification shall remain in effect only until the City of Chicago has granted or denied the application. Such certification shall be obtained by providing to the Board of Education a copy of the firm's application for city certification.

2.1.2 Temporary certification shall also be given to firms which have contracted with the Board of Education in the past and in doing so have identified themselves as MBEs or WBEs. This form of temporary certification shall be granted upon submission to the Board of an affidavit stating in detail why the firm meets the certification criteria set forth in Part 4 of this Plan, and representing that the firm will promptly apply to the City of Chicago for MBE or WBE certification. Temporary certification granted under this subparagraph shall be effective for a period of 30 days from submission of the affidavit.

2.1.3 In no event shall temporary certification confer any status or rights beyond April 30, 1987.

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DESCRIPTION: This amendment to Section 2.1 makes provision for Board of Education temporary certification of minority and women business enterprises which have not been certified by the City of Chicago Purchasing Department.

The Board of Education Management Committee at its meeting of November 13, 1986 directed that a report be submitted to the Board recommending that this amendment be approved.

FINANCIAL: No cost to the Board of Education.

Respectfully submitted,

Patricia J. Whitten,
Attorney

February 11, 1987

87-0211-MO7

MOTION RE AMEND MINORITY BUSINESS ENTERPRISE/
WOMEN BUSINESS ENTERPRISE PLAN

MOTION ADOPTED that the Board adopt the attached amendment to provide that when, in the judgement of the Board, a category or class of contracts does not lend itself to reasonable adaptation under the Minority and Women Business Enterprise Plan, the Board may apply the goals to the aggregate dollar value of all the contracts in said category or class for compliance with the Minority and Women Business Enterprise Plan.

The amendment is effective immediately upon adoption of this motion.

ADMENDMENT TO THE MWBE PLAN

5.2 GOALS FOR SPECIFIC CATEGORIES OR CLASSES. A DIFFERENT COMPLIANCE FORMAT, SUCH AS APPLYING THE GOAL TO THE AGGREGATE DOLLARS VALUE OF ALL CONTRACTS IN A CATOGERY OR CLASS RATHER THAN TO EACH INDIVIDUAL CONTRACT, MAY BE ESTABLISHED UPON A DETERMINATION THAT THE INDIVIDUAL CONTRACT FORMAT IS NOT FEASIBLE OR THAT A DIFFERENT METHOD WILL MORE EFFECTIVELY SERVE THE PURPOSES OF THE PLAN.

5.2.1. IF THE COMPLICANCE FORMAT FOR A CATEGORY OR CLASS IS DETERMINED TO BE ON AN AGGREGATE BASIS RATHER THAN AN INDIVIDUAL CONTRACT BASIS, COMPLIANCE SUBMISSIONS SHALL STILL BE REQUIRED FOR INDIVIDUAL CONTRACTS AS DESCRIBED IN SECTION 8.2.1.1

8.2.1.1 IF THE COMPLIANCE FORMAT FOR A CATEGORY OR CLASS IS DETERMINED TO BE ON AN AGGREGATE BASIS RATHER THAN AN INDIVIDUAL CONTRACT BASIS, THE CRITERION FOR DETERMINING RESPONSIBILITY OF A BIDDER OR PROPOSER SHALL BE " EVERY GOOD FAITH EFFORT OT MAXIMIZE MINORITY AND WOMEN PARTICIPATION." IN THAT EVENT THE COMPLIANCE SUBMISSION SHALL STATE IN DETAIL THE FORM AND EXTENT OF ANTICIPATED MINORITY AND WOMEN PARTICIPATION, THE EFFORTS THAT HAVE BEEN MADE TO SECURE SUCH PARTICIPATION, AND THE REASONS WHY A HIGHER LEVEL OF PARTICPATION IS NOT AVAILABLE OR ECONOMICALLY REASONABLE.

87-0422-AR5 April 22, 1987

AUTHORIZATION TO AMEND PLAN FOR MINORITY AND WOMEN BUSINESS ENTERPRISE CONTRACT PARTICIPATION TO PROVIDE THAT THE WAIVER REVIEW COMMITTEE INCLUDE A REPRESENTATIVE OF THE CHIEF FINANCIAL OFFICER

RECOMMENDATION: Authorization to amend Section 3.15 of the Plan for minority and Women Business Enterprise Contract Participation to provide that the Waiver Review Committee shall consist of staff members from the Bureau of Affirmative Action, Law Department and Office of the Chief Financial Officer, as follows:

3.15 Waiver Review Committee - Consists of a staff members member of the Bureau, and Law Department and Office of the Chief Financial Officer who review waiver requests.

DESCRIPTION: Presently, the Waiver Review Committee consists of staff members from only the Bureau and the Law Department. This amendment to Section 3.15 makes provision for expansion of the Waiver Review Committee to include a staff member of the Office of the Chief Financial Officer. This expansion of the Waiver Review Committee will ensure that at all times there is a recommendation by a majority of the members of the Committee.

FINANCIAL: No cost to the Board of Education.

Respectfully submitted,

Patricia J. Whitten

Patricia J. Whitten,
Attorney

87-0422-AR6 April 22, 1987

AUTHORIZATION TO AMEND SECTIONS 2.1, 2.1.3 AND 2.3 OF THE PLAN FOR MINORITY AND WOMEN BUSINESS ENTERPRISE CONTRACT PARTICIPATION TO EXTEND THE EFFECTIVE DATES OF CERTIFICATION AND BID CREDITS FROM APRIL 30, 1987 TO OCTOBER 30, 1987

RECOMMENDATION: Authorization to amend Sections 2.1, 2.1.3 and 2.3 of the Plan for Minority and Women Business Enterprise Contract Participation to extend from April 30, 1987 until October 30, 1987, the termination date of temporary certification of MBEs and WBEs, the implementation date of a certification system for the Board, and the effective date of Part 7 of the Plan concerning credits, as follows:

2.1 With respect to the certification of MBEs and WBEs, every firm which is presently certified by the City of Chicago Purchasing Department as an MBE or WBE is hereby granted temporary certification which shall be effective until ~~April~~ October 30, 1987, and shall then automatically expire. This temporary certification shall confer no rights to continued certification. During this period, the Board of Education will continue to conform its temporary certification list to the City of Chicago list, adding firms which are certified by the City of Chicago and deleting those which are decertified. Before October ~~April~~ 30, 1987, the General Superintendent will develop and implement a certification system for the Board of Education, on a time line designed to produce the Board of Education's own list of certified MBEs and WBEs by ~~April~~ October 30, 1987, including the de novo consideration for certification of firms granted temporary certification by this Section 2.1.

2.1.1 Remains unchanged.

2.1.2 Remains unchanged.

2.1.3 In no event shall temporary certification confer any status or rights beyond ~~April~~ October 30, 1987.

2.2 Remains unchanged.

2.3 The effective date shall be January 1, 1987, for Part 6 of the Plan concerning set-aside and October 30, 1987 for Part 7 of the Plan.

DESCRIPTION: These amendments to Sections 2.1, 2.1.3 and 2.3 of the Plan make provisions to extend the date from April 30, 1987 until October 30, 1987 for the General Superintendent to implement a certification system, extend temporary certifications of MBEs and WBEs until said certification system implementation date, and extend the effective date of bid credits.

The Board of Education Management Committee at its meeting of April 14, 1987 directed that a report be submitted to the Board recommending that these amendments be approved.

FINANCIAL: No cost to the Board of Education.

Respectfully submitted,

Patricia J. Whitten

Patricia J. Whitten,
Attorney